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ABSTRACT

This handbook provides information on the rights of parents of children with disabilities in North Carolina. Federal and state laws governing rights of parents are briefly summarized, followed by a more detailed description of rights in various areas, including: (1) referrals for special education services; (2) evaluation procedures; (3) reevaluation; (4) independent educational evaluation; (5) eligibility determination; (6) Individualized Education Programs (IEP) for the student with disabilities; (7) written education programs for the pregnant; (8) related services; (9) least restrictive environment; (10) placement; (11) procedures for Interim Alternative Education Settings (IAES); (12) unilateral placement by parents of children in private schools at public expense; (13) prior written notice; (14) participation in meetings; (15) access to student records and confidentiality of information; (16) parental consent; (17) formal written complaints; (18) mediation; (19) impartial due process hearing and state review, civil actions, and attorneys' fees; and (20) the rights of surrogate parents. Each section describes the parental rights and then gives a user-friendly interpretation. (CR)

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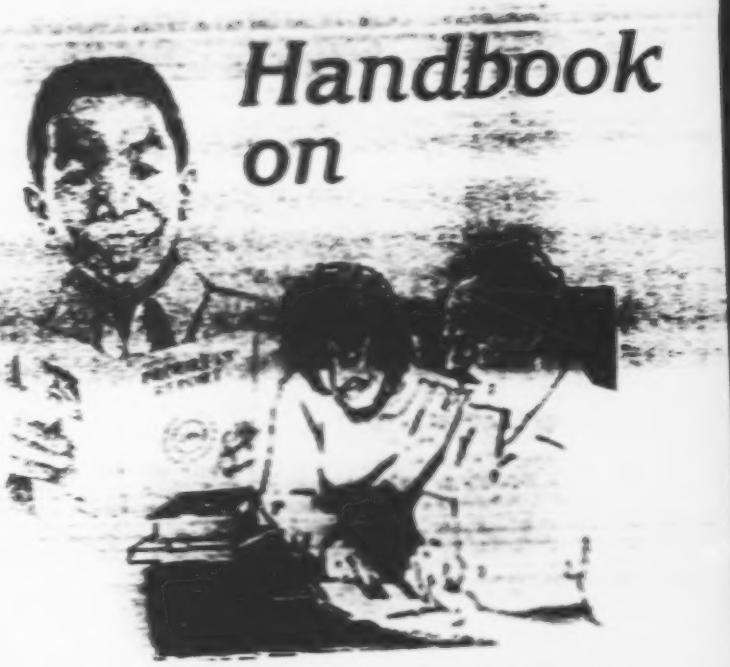

Parents' Rights

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Public Schools of North Carolina
State Board of Education
Department of Public Instruction
Exceptional Children Division

November 1997

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SPECIAL EDUCATION LAWS GOVERNING THE RIGHTS OF PARENTS AND CHILDREN WITH DISABILITIES

North Carolina has educated children with disabilities in its public schools since 1949-50, but it was not until 1977 that the General Assembly passed a law which required the state's public schools to provide special education for all children with disabilities. This law is Article 9, Special Education, of the North Carolina General Statutes, Section 115C-106 to 115C-150. Article 9 models the federal law, P.L. 94-142, as amended, which is entitled "Individuals With Disabilities Education Act" (IDEA), formerly known as "Education of the Handicapped Act" (EHA). In 1997, IDEA was reauthorized. These laws define special education as specially designed instruction, at no cost to the parent, to meet the unique needs of the exceptional child and may include instruction provided in the classroom, in the home, in the hospital, and in residential facilities and other settings. Children with disabilities include children who are **autistic, deaf-blind, behaviorally-emotionally handicapped, hearing impaired, mentally handicapped, multihandicapped, other health impaired, orthopedically impaired, pregnant, pre-school delayed atypical, specific learning disabled, speech-language impaired, traumatic brain injured, and visually impaired.**

These laws require that all children with disabilities ages 3-20 be provided a free appropriate public education. Free appropriate public education means that special education and related services based on the unique needs of the child will be provided:

(a) at public expense without cost to the parents;
(b) according to standards of Public Schools of North Carolina, Department of Public Instruction; and
(c) according to an individualized education program (IEP) or written education program (WEP).

PURPOSE OF THIS HANDBOOK

The parent of a child who receives special education or who is being considered for special education is guaranteed certain procedural safeguards (rights) under federal and state laws. The purpose of this handbook is to provide you with information about your rights, the rights of your child, and the responsibilities of the local education agency toward meeting the special needs of your child. Federal and state laws require parents to be fully informed of all available procedures relating to the following:

(1) Independent educational evaluation;
(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present complaints;
(6) Placement during the pendency of due process proceedings;
(7) Procedures for interim alternative education settings;
(8) Requirements for unilateral placement by parents of children in private schools at public expense;
(9) Mediation;
(10) Due process hearings and state level appeals;
(11) Civil actions; and
(12) Attorneys' fees.

It is important that you understand these rights as a parent of a child with a disability. Our staff is available to assist you in understanding your rights and will provide a further explanation of the available procedures upon your request. If it is necessary, we will provide an interpreter or written translation to help you understand the information presented in this handbook. If you have any questions or would like additional information please contact the special education department in your local school or:

PROGRAM DIRECTOR _____ TELEPHONE _____

YOUR RIGHTS AS A PARENT

Referrals for Special Education Services

Federal and state laws require education agencies to identify, locate, and evaluate all children with disabilities, including children who are enrolled in private or parochial elementary and secondary schools, who may be in need of special education and related services.

When any person or agency thinks that a child may need special education services, that person or agency should tell school personnel in writing the reason(s) for referring the child for testing/evaluation. The referral should include the child's specific problem and the child's current strengths and weaknesses. If the child is enrolled in a public school, the referral should be given to the child's teacher or principal. If the child is not enrolled in a public school, the referral should be given to the superintendent of the local public schools.

Evaluation Procedures

After a child has been referred to determine his/her need for special education services, an evaluation process must be followed. The following specific procedures protect the rights of students and their parents:

A. Prior written notice of their rights must be given to parents in the language they best understand. The parents must give written permission before the first individual evaluations can begin.
B. Testing and evaluation materials must be selected and administered in a way that is not racially or culturally biased. The materials must not discriminate against the child.
C. Before any action is taken in the initial placement of a child in a special education program, a full and individualized evaluation must be done.
D. The school system must meet the following requirements in its evaluation procedures:

1. The tests must be:
   a. selected and administered so as not to be discriminatory on a racial or cultural basis,
   b. given in the child's native language or other way of communication; and
   c. validated (useful) for the purpose for which they are used. For example, achievement tests may not be used to measure intellectual ability.
2. The selected test and other evaluation materials must include those designed to measure specific areas of educational need and not those designed to provide a single general measure of intelligence. (The tests must look at the area in which the child seems to have needs).
3. A test must allow for impaired vision, hearing, manual or speaking skills so these impairments do not lower test scores.
4. The evaluation must be done by a multidisciplinary team of trained specialists including those with knowledge in the area of the child's suspected disability or special need.
5. The child must be evaluated in all areas related to the suspected disability or special need as required in Procedures Governing Programs and Services for Children with Special Needs which is approved by the State Board of Education.
6. One test or procedure is not enough to determine the special education program a child might need.
7. The evaluation shall consist of a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and in developing the content of the individualized education program. This shall include information that will enable the child to be involved in, as well as progress in, the general curriculum. The information shall allow preschool children to participate in activities appropriate to their age.

IN OTHER WORDS.....

You, as a parent, must give your permission in writing before the school system can evaluate your child. Evaluations to decide whether a child has a disability that requires special education and related services must consist of more than one test, and those tests must be given in the language that the child normally uses. This includes hearing impaired children who use a way to communicate that is different than the spoken word, such as cued speech or signing, as well as visually impaired children who may use braille, and children for whom English is not the language they usually use. Tests must be given by people who have been trained in the use of the test. You, as a parent, can provide the school with information about your child that you want them to use in deciding if your child has a disability that requires special education and related services.

Reevaluation

The education agency shall conduct a reevaluation of a child with a disability if conditions warrant or if parents or the child's teacher requests reevaluation, but at least once every 3 years.

1. The parents' informed consent should be secured prior to reevaluation; however, consent is not necessary if the education agency can demonstrate that reasonable measures were taken to obtain consent and a parent failed to respond.
2. If the individualized education program team (IEP team) determines that no additional data are needed to determine whether the child continues to be a child with a disability and requires special education services, the education agency:
   a. shall notify the parents of that decision and their rights as parents to request an assessment to determine whether the child continues to be a child with a disability; and
   b. shall not be required to conduct such an assessment unless requested by the parent.

IN OTHER WORDS.....

Your written permission is required before the education agency can conduct a reevaluation of your child. If the IEP committee decides that a reevaluation is not necessary to determine your child's needs and you disagree, the education agency must complete a reevaluation at your request.

Independent Educational Evaluation

If parents feel that the evaluation is not adequate to determine the child's special needs, they have the right to an independent educational evaluation. This evaluation must be given by a qualified examiner who is not employed by the education agency responsible for the child's education. The following parental rights concerning evaluation procedures are related to obtaining an independent educational evaluation:

A. Parents have the right to be given, on request, information about where an independent (done outside the education agency) educational evaluation may be obtained. This request should be sent to the director for exceptional children programs.
B. Parents have the right to be told about the requirements for selecting a qualified examiner. The requirements for an independent educational evaluation must be the same as those used by the education agency. These requirements may be obtained from the local director for exceptional children programs.
C. The independent educational evaluation will be provided at no cost to the parents if the parents disagree with the evaluation obtained by the education agency. However, the education agency may ask for an impartial due process hearing to show that its evaluation is appropriate. If the final decision of the due process hearing determines that the evaluation is appropriate, the parents have the right to an independent educational evaluation. However, such an evaluation would not be

provided at public expense. The results from the independent educational evaluation must be considered in special education decisions regarding a child.

D. An impartial hearing officer may initiate the order for an independent educational evaluation at public expense or may grant a parent's request for such evaluation at public expense during the course of a due process hearing. The hearing officer will not be an employee of the education agency.

E. Parents must be aware that if they purchase an evaluation for their child they must not expect the education agency to pay for the evaluation in every case unless they have received written approval for payment from the appropriate person in the local education agency.

F. Educational evaluations obtained at parent expense must be considered by the education agency in any decision relating to a free appropriate public education for the child and may be used as evidence at a hearing regarding the child.

IN OTHER WORDS.....

Before receiving special education services, your child must receive an evaluation to determine if a disability exists. If you disagree with the school's evaluation results, you can request an independent educational evaluation. This service is provided at the school system's expense and the testing is done by someone other than school staff. The results of an independent educational evaluation must be considered, but do not have to be accepted or used by the school.

Eligibility Determination

After the evaluation process is completed, a decision must be made to determine if the child needs special education and related services. This decision must be made by a group of persons including the parent who are knowledgeable about the child, the meaning of the evaluation data and the placement options (choices).

Individualized Education Program (IEP) for the Student with Disabilities

If a decision is made that a child with a disability needs special education and related services, then an individualized education program (IEP) must be developed within thirty (30) days of that determination. An IEP is a written plan for the special education and/or related services that will be provided to a particular child. An IEP must be developed before special education and related services are provided to a child and the services must start as soon as possible following the meeting(s) in which it was developed. The education agency is required to hold meetings at least once a year, or more often if necessary, to review each child's IEP and to revise the IEP when needed.

A. **For IEPs in effect prior to July 1, 1998**, the people who must be invited to attend the meeting to develop the IEP include:
   1. someone from the education agency, other than the child's teacher, who is qualified to provide or supervise special education;
   2. the child's teacher;
   3. one or both of the parents;
   4. the child, when the meeting is to discuss transition services, and at other times where appropriate; and
   5. other individuals at the choice of the parent or the education agency.
   8. If the child is being considered for special education for the first time, the education agency must have:
      a. a member of the evaluation team participate in the IEP meeting, or
      b. someone from the education agency, the child's teacher, or some other person present at the meeting who is knowledgeable about the evaluation procedures used with the child and who knows about the results of the evaluation.

For IEPs in effect beginning July 1, 1998, the people who must be invited to attend the meeting to develop the IEP include:

1. someone from the education agency, other than the child's teacher, who is qualified to provide or supervise special education, is knowledgeable about the general education curriculum, and can commit resources;
2. the child's special education teacher;
3. the child's regular education teacher if the child is or may be participating in the regular education setting;
4. one or both parents;
5. the child, when the meeting is to discuss transition services, and at other times where appropriate;
6. a representative of any other agency that is likely to be responsible for providing or paying for transition services;
7. other individuals who have knowledge or special expertise about the child at the choice of the parent or the education agency.
8. An individual who can interpret the instructional implications of evaluation results.

C. The education agency must notify the parents of the IEP meeting early enough to ensure that the parent will have an opportunity to attend. Also the education agency must schedule the meeting at a mutually convenient time and place (when school staff and parent can meet).

D. The notice must state the purpose, time and location of the meeting and who will be attending for the education agency. If the school is unable to name the people who will be attending the meeting at the time they send the invitation they will provide the positions of those who will attend, i.e., the occupational therapist, the psychologist, etc.

E. If the parent does not come to a scheduled IEP meeting, the meeting may be held, as long as the education agency has a record of its efforts to involve the parent.

F. The education agency must ensure that parents understand what happens at the IEP meeting. For instance, if the parents do not speak English, an interpreter will be provided by the education agency.

G. The education agency must furnish a copy of the IEP to the parent upon request.

H. **Prior to July 1, 1998**, the written IEP must include:
   1. a statement of the child's present level of educational performance;
   2. a statement of goals for the year, including short term instructional objectives;
   3. a statement of the special education and related services to be provided;
   4. how much the child will be able to participate in regular education programs;
   5. annual statement of needed transition services for students beginning no later than age sixteen (16) or younger when appropriate including responsibilities of other agencies before the student leaves school;
   6. the date services are expected to begin and end; and
   7. appropriate objective criteria, evaluation procedures, and schedules for determining, at least annually, whether instructional objectives are being achieved.

Individualized Education Programs which are in effect after July 1, 1998, must include:
1. a statement of the child's present level of educational performance which will tell how the disability affects the child's involvement in the general curriculum; or, for preschool children, how the disability affects child's participation in appropriate activities;
2. a statement of goals for the year, including short term instructional objectives; these statements must show how they are related to:
   a. meeting the child's needs in the general curriculum; and
   b. meeting the child's other educational needs resulting from the child's disability.
3. a statement of the special education, including related services and supplementary aids and

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services, and a statement of the program modifications or supports for school personnel that will be provided in order for the child:

   a. to advance appropriately toward attaining the annual goals;
   b. to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities;
   c. to be educated and participate with other children with disabilities and nondisabled children in the general curriculum, nonacademic activities, and extracurricular activities.

4. an explanation of the extent to which a child will not participate with nondisabled children in the regular classroom and /or nonacademic or extracurricular activities;
5. a statement of modifications for the statewide testing programs, and
   a. a statement why participation is not appropriate if that is the case;
   b. how the child will be assessed.
6. the date services are expected to begin and end;
7. transition components that include:
   a. at age 14, a statement of the child's transition service needs that focus on the child's course of study (such as participation in vocational courses or advanced placement courses);
   b. at age 16 (or younger when necessary), a statement of needed transition services for the child including, when necessary, a statement of other agency responsibilities (such as vocational rehabilitation or mental health) that may be needed;
8. a statement of how the child's progress toward the annual goals and short term objectives will be measured, what that progress is, and how the parents will be informed of that progress at least as often as parents of nondisabled students are notified of their progress.

Written Education Program for the Pregnant (WEP)
A written education program is to be developed for each pregnant school girl who is in need of special educational services. Pregnant students with special educational needs are those who, because of their pregnancy, require special education and/or related services other than that which can be provided through regular educational services.

When a student is pregnant and it appears that her educational needs cannot be met in a regular class, she should be referred to the IEP Team. The parent must be contacted after the referral is made to give consent for any additional evaluations that might be needed and to be involved in deciding the services to be provided to the student.

Related Services
Related services is defined in Procedures Governing Programs and Services for Children with Special Needs as follows: transportation and such developmental, corrective, and other supportive services including speech pathology and audiology, psychological services, physical and occupational therapy, recreation including therapeutic recreation; social work services; medical and counseling services, including rehabilitation counseling; orientation and mobility services, and other services, as may be required to assist a child with a disability to benefit from special education. This includes the early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only.

To be eligible to receive related services, a child must:

1. have one or more of the special needs listed in the definition from the Procedures Governing Programs and Services for Children with Special Needs;
2. require special education (Not all children who have a disability require special education; many can and should attend school without any program modification.); and
3. require the related service in order to benefit from the special education instruction.

Least Restrictive Environment

As much as possible, children with disabilities must participate with children who have not been identified as having special needs in non-academic, academic and extracurricular activities such as meals, recess, counseling, athletics, special interest groups and clubs. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment must occur only when the nature or severity of the special need is so great that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The child should be educated in the school he or she would attend if not disabled unless the individualized education program (IEP) requires some other arrangement. In looking at the least restrictive environment, decisions must be made on the basis of the individual child's educational needs and must be determined at least annually. Federal and state laws require school systems to provide for a continuum of programs and services to meet the needs of identified students as stated in their IEP, including:

1. regular setting;
2. resource setting;
3. separate setting;
4. public and private separate school facilities;
5. hospital/homebound setting; and
6. residential programs.

IN OTHER WORDS.....

Whenever possible your child should be educated in the general education classroom. Special education can take place in the general education classroom with modifications and supplementary services. Sometimes your child might have to go to another classroom to receive special instruction. Unless the IEP requires some other arrangement, your child is to be educated in the school which he/she would attend if not disabled.

Placement

Placement in a special education program is the end result of referral, identification, evaluation and the development of the IEP. The school system must ensure that:

1. placement is based on the child's IEP;
2. placement is made within ninety (90) days of the date that the IEP team received the written referral; and
3. placement and the IEP are reviewed and determined at least annually.

The decision that a child requires special education and/or related services must be made by a group of persons. Parents of each child with a disability are members of any group making placement decisions. A placement decision cannot be made by one person.

Procedures for Interim Alternative Education Settings (IAES)

Sometimes the behavior(s) of a child with a disability allows school officials to move him/her to an interim alternative education setting, another setting or suspension for up to ten (10) school days during the school year. Under very specific circumstances, a child with a disability may be removed to an interim alternative education setting for up to forty-five (45) days. Those circumstances occur when:

a. the child carries a weapon to school or to a school function; or
b. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

An interim alternative education setting is determined by the IEP team, which includes the parent(s), and it must enable the child to continue participation in the general curriculum (although in another setting) and to continue to receive those services and modifications (including those described in the child's IEP) that will enable the child to meet the goals and objectives in the IEP.

It should also include services and modifications designed to address the behavior that led to the child's removal to the alternative educational placement so that it does not recur.

A child who has not yet been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the education agency may assert any of the protections described in this section if the education agency had knowledge that the child was a child with a disability before the behavior that led to disciplinary action occurred. The education agency will be considered to have knowledge that a child is a child with a disability if:

1. the parent has expressed concern in writing to personnel of the education agency that the child is in need of special education and related services;
2. the behavior or performance of the child demonstrates the need for such services;
3. the parent has requested an evaluation of the child to determine eligibility for special education and related services;
4. the child's teacher or other personnel of the education agency have expressed concern about the child's behavior or performance to the director of special education or other personnel of the agency.

An evaluation requested during the time period in which the child is subjected to disciplinary measures shall be conducted in an expedited (performed quickly) manner. The child will remain in the educational placement determined by school authorities until the evaluation process is completed. If the chid is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the education agency and information provided by the parents, the education agency shall provide special education and related services in accordance with the provisions of the Individuals with Disabilities Education Act (IDEA).

IN OTHER WORDS.....

Your child can be moved to an interim alternative education setting, another setting or suspended for up to ten (10) school days during the school year. Placement in an interim alternative education setting for up to forty-five (45) days can occur for drugs or weapons violations or for dangerous behavior. The interim alternative education setting is decided on by the IEP team which includes you as a parent. The setting must enable your child to continue participation in the general curriculum and to continue to receive services and modifications that will enable your child to meet the goals and objectives in his/her IEP. It should also include services and modifications designed to address the behavior that led to your child's placement in an alternative educational placement. A child who has not been determined eligible for special education and related services and who has violated any rule or code of conduct of the education agency may have protections under IDEA if the education agency had knowledge that the child was a child with special needs before the behavior that led to the disciplinary action occurred.

Unilateral Placement by Parents of Children in Private Schools at Public Expense

When the state or local education agency places children with disabilities in private schools and facilities, they are provided special education and related services, in accordance with an individualized education program (IEP) at no cost to the parents. An education agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the education agency made a free appropriate public education available to the child and the parents elect to place the child in such private school or facility.

However;

A. Reimbursement may be available if a hearing or review officer determines that the education agency did not make a free appropriate public education available to the child in a timely manner prior to the enrollment in a private school. Reimbursement may be reduced or denied for the following reasons:
   1. if at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the education agency to provide a free appropriate public education to their child, including their concerns and their intent to enroll their child in a private school at public expense; or, ten (10) business days (including any holidays that occur on a business day) prior to removal of the child from the public school, the parents did not give written notice to the education agency of rejection of placement, including their concerns and their intent to enroll their child in a private school at public expense;
   2. if prior to the parents' removal of the child from the public school, the education agency informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
   3. upon a judicial finding of unreasonableness with respect to actions taken by the parents.

B. The cost of reimbursement may not be reduced or denied if the parent did not provide notice to the education agency because:
   1. the parent is illiterate (unable to read) and cannot write in English;
   2. compliance would likely result in physical or serious emotional harm to the child;
   3. the school prevented the parent from providing such notice; or
   4. the parent had not received notice of the requirement.

IN OTHER WORDS.....

Sometimes you may think your child with a disability is not receiving the services that you believe are appropriate and you decide to place your child in a private school and request that the school system pay for it. In order for a hearing officer to consider your request, you must have told school officials at the last IEP meeting you attended that you were going to enroll your child in a private school, and explain your concerns about the school program. If you have not attended an IEP meeting recently, your intention of enrolling your child in a private school and requesting that the school system pay for it, must be submitted in writing to the school system within ten (10) business days of the withdrawal of your child from school. Your letter must tell school officials that you are withdrawing your child and why.

Prior Written Notice

Federal and state laws require that a very specific type of written notice be given to the parents of a child with a disability before the school system initiates or changes, or refuses to initiate or change, the identification, evaluation, or placement of a child or the provision of a free appropriate public education for the child (the services provided in the IEP). The education agency must also provide a copy of the parental rights upon the registration of a complaint regarding the provision of a free appropriate public education.

A. The prior written notice must include a full explanation of all of the procedural safeguards (rights) available to the parents under federal and state laws. Specific content includes the following:
   1. a description of the action proposed or refused by the education agency;
   2. an explanation of why the education agency proposed or refused to take action;
   3. a description of any options the education agency considered and reasons why those options were rejected;

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4. a description of each evaluation procedure, test, record, or report the education agency will use as a basis for the proposal or refusal;
5. a description of any other factors which are relevant (important) to the education agency's proposal or refusal;
6. a statement that the parents of a child with a disability have protection under the procedural safeguards (rights). If the notice is not an initial referral for evaluation, a statement must tell the parents how they can get a copy of a description of the procedural safeguards; and
7. where parents can get assistance in understanding the content of notice.

B. The prior notice must be written.
C. The notice must be written in language understandable to the general public.
D. The notice must be given in the parent's native language or other mode of communication used by the parents.
E. If the native language or other mode of communication used by the parents is not a written language, the education agency shall take steps to ensure:
   1. that the notice is translated orally or by other means in the parents' native language or other mode of communication;
   2. that the parents understand the content of the notice; and
   3. that there is a written record that the requirements have been met.

IN OTHER WORDS.....

The school will notify you each time it plans or refuses to begin or change your child's identification, evaluation, educational placement, or the individualized education program (IEP).

Participation in Meetings

The education agency must provide parents the opportunity to participate in all meetings regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education for a child with a disability.

> ***IN OTHER WORDS.....***
>
> ***You can be present at any meeting that is held to talk about your child's category of disability; about evaluations and their results; about the placement of your child including disciplinary actions when a suspension of more than ten (10) school days may be involved; and his/her IEP and its contents.***

Access to Student Records and Confidentiality of Information

A. The education agency must permit parents to inspect and review all educational records relating to their child. The education agency shall respond without unnecessary delay, and in no case more than forty-five (45) days, after the request has been made. A quick response is required when records are needed prior to an IEP meeting or due process hearing relating to the child's identification, evaluation, or placement, or to the provision of a free appropriate public education for the child.
B. The education agency must respond to a reasonable request for explanation and interpretation of the records, and must provide upon request, a list of the types and locations of records maintained.
C. The education agency may charge a fee for copies of records made for parents but must provide copies of the records at no cost if failure to do so would effectively prevent parents from exercising (using) their right to review and inspect those records. The education agency may not charge a fee for searching through the records.
D. The parents have the right to have their representative inspect and review the records.

E. The parents have the right to restrict (not allow) access to their child's records by withholding consent to disclose records, except in certain circumstances.

F. Parents have authority to inspect their child's records unless the education agency has been informed that a parent has no authority under state laws relating to such matters as guardianship, separation, and divorce.

G. Parents have the right to inspect the record of access kept by the education agency that shall include the name, date and purpose for which persons other than the parents and authorized employees of the education agency have obtained access to their child's record.

H. If any education record contains information on more than one child, parents have the right to review only the information relating to their child.

I. The parents have the right to be informed before information in the child's file is to be destroyed.

J. If a parent believes that information in the record is inaccurate, misleading or violates the child's privacy or other rights, he or she can request that the education agency amend the record. If the education agency decides not to amend the record, it must inform the parent of the refusal within a reasonable time after the initial request. The education agency must advise the parent of his/her right to a hearing before a neutral person who is not involved in the dispute.

K. If, as a result of the hearing, the education agency decides that information contained in the child's record is inaccurate, misleading, or in some way violates privacy or other rights of the child, the education agency shall amend the record and inform the parents of the changes in writing.

L. If, as a result of the hearing, the education agency's refusal to amend the record is upheld, then the parents must be informed of their right to place a statement in the records commenting on the information or explaining their disagreement with the education agency.

M. Any explanation placed in the child's record must:

1. be kept by the education agency as part of the child's record as long as the record or the portion of disagreement is maintained by the education agency and

2. if the child's record or the portion of disagreement is disclosed to anyone by the education agency, the explanation must also be disclosed.

N. Parents have the right to request that records pertaining to the identification, placement and special educational programming of children with disabilities be destroyed when the records are no longer needed to provide special education services to the child. Parents may request a copy of the records before they are destroyed. Such records might sometimes be needed to document eligibility for social security benefits or other purposes.

IN OTHER WORDS.....

You have the right to see or request copies of all your child's school records. If you disagree with items in the records, you can request for those items to be changed or removed. The school will either agree or disagree with your request. You can have a hearing if you disagree with the school's decision.

Parental Consent

A. The education agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined by law shall obtain an informed written consent from the parent of the child before the evaluation is conducted.

B. An informed parental consent must also be obtained by the education agency prior to conducting a reevaluation of a child with a disability, except that such parent consent need not be obtained if the education agency can demonstrate that it has taken reasonable measures to obtain such consent and the parent fails to respond.

C. Parental consent must be obtained by the educational agency before a child is initially placed in special education.

D. If a parent refuses to consent, the education agency may continue to pursue an evaluation or placement by utilizing mediation or initiating an impartial due process hearing to

determine if the child should be initially evaluated or initially placed. The parents have the right to protest the proposed action at the hearing.

E. Except for preplacement evaluation, initial placement and re-evaluation, consent may not be required in order for your child to receive special education.

F. If the hearing officer upholds the education agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent. Any party to the hearing has the right to appeal to the state education agency which shall conduct an impartial review of the hearing. This decision is final unless a party decides to bring an action in court.

IN OTHER WORDS.....

Your written permission is required before your child is first evaluated, reevaluated and placed in special education for the first time. No consent for reevaluation is necessary when the parents fail to respond to the education agency's reasonable measures to obtain their consent. If you refuse to give consent, the school system can request mediation or go to a hearing before a hearing officer (administrative law judge) and request permission from the hearing officer to proceed without your permission.

Formal Written Complaints

When the parents or any person, organization, or agency acting on behalf of a child fail to agree with the education agency on the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education, they may wish to file a formal written complaint with the Exceptional Children Division. A formal complaint is a statement, written and signed by the person complaining, alleging that an education agency is not carrying out the law that requires every exceptional child to be provided a free appropriate public education. Staff will conduct an investigation into the allegation(s) and provide in

writing the results of the investigation within sixty (60) days to the person filing the complaint. Either party to a complaint has the right to request that the Secretary of the United States Department of Education review the results of the investigation if they disagree with the outcome. Any person, organization, or agency can file such a complaint by writing a letter to the Director, Exceptional Children Division, Department of Public Instruction, 301 N. Wilmington Street, Raleigh, North Carolina 27601-2825. For additional assistance concerning the filing of a complaint, parents may contact the Division at (919)715-1587.

IN OTHER WORDS.....

A formal complaint is a chance for you to tell the Exceptional Children Division at the state level about your allegations against the school system which relate to your child's identification, evaluation, special education and related services. This will probably happen only after you have talked with your child's teacher, principal and the local Director of Exceptional Children Programs and you are not able to settle the differences. The Division is not able to help with problems that you might be having with the teacher and/or principal of the school. These are personnel issues that can only be settled in the local school district. Issues related to the appropriateness of your child's special education and related services can be addressed by the IEP team, through mediation or a due process hearing.

Mediation

If parents and the education agency cannot agree on the identification, evaluation, or educational placement or the provision of a free appropriate public instruction for a child with a disability, then a third party can be requested to mediate (talk to both sides about the disagreement). Mediation is a process offered through the education agency in an attempt to resolve the problem(s) prior to filing for a formal administrative review (due process hearing). The following are required of the mediation process:

(1) it is voluntary on the part of the parties;
(2) it is not used to deny or delay a parent's right to a due process hearing or any other rights they are afforded;
(3) it is conducted by a qualified and impartial mediator who is trained in effective mediation techniques; and
(4) there are no costs to the parent

Informal resolution of disputes or disagreements, such as mediation, regarding the identification, evaluation, or educational placement or the provision of a free appropriate public education of a child with disabilities is encouraged before filing a request for a formal administrative review of the matter. A parent may request mediation by notifying the superintendent of the local public school system in writing.

IN OTHER WORDS.....

On rare occasions, you might disagree with the appropriateness of your child's special education testing, services or educational placement. It is important to try all ways to resolve your disagreements prior to filing a petition for a due process hearing, including mediation, which is a service offered at no expense to you. A mediator is a neutral person who tries to resolve differences between you and the school. If no agreement is reached, you can ask the school where to file for a due process hearing. Due process is like going to court. Please have the school explain the process before you make a final decision. Mediation can be requested by notifying the superintendent of the local public school system in writing.

Impartial Due Process Hearing and State Review, Civil Actions and Attorneys' Fees

A parent or public agency may file a petition for an impartial due process hearing (sometimes called administrative review or contested case hearing) to challenge the identification, evaluation, or placement of a child or the provision of a free appropriate public education for the child. This kind of hearing places the responsibility for resolving the conflict on an administrative law judge in the Office of Administrative Hearings, an agency that

has no relationship with the local education agency or with the State Department of Public Instruction.

A. In order to exercise the right to a due process hearing, the parent must file a petition within sixty (60) days of written notice of the contested action with the Office of Administrative Hearings at 424 N. Blount Street, P.O. Drawer 27447, Raleigh, NC 27611-7447. For additional information concerning the filing of a petition, parents should contact the Office of Administrative Hearings, telephone 919/733-2698. Parents or their attorney must provide notice (which shall remain confidential) of the following:
   1. the name of the child, the address of the residence of the child, and the name of the school the child is attending;
   2. a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
   3. a proposed resolution of the problem to the extent known and available to the parents at the time.

B. Mediation, conducted by an impartial mediator and voluntary on the part of the parties, will be made available when a due process hearing is requested.

C. Parents have a right to be told where they can get free or low cost legal advice or related services in the area if:
   1. the parent requests the information; or
   2. the parent or the education agency initiates a hearing. Parents can get this information from the education agency or they can call the Governor's Advocacy Council for Persons with Disabilities toll-free at 1-800-821-6922.

D. The hearing must be conducted by an impartial hearing officer (administrative law judge), a person who is not employed by any public agency involved in the education of the child and who has no professional or personal interest in the result of the hearing.

E. The parents have the right to see a list of persons who serve as hearing officers. This list, kept by the education agency, shall include a statement of the qualifications of each impartial hearing officer.

F. Any party has the right to bring to the hearing an attorney and other individuals with special knowledge or training in the education of children with special needs.

G. Any party has the right to present evidence and confront, cross examine and require the attendance of witnesses.

H. At least five (5) business days prior to hearing each party shall disclose all evaluations and recommendations the party intends to use at the hearing;

I. Failure to disclose evaluations and recommendations the party intends to use at the hearing may result in barring the introduction of this information at the hearing without the other party's consent.

J. The parents have the right to have their child present.

K. The parents have the right to open the hearing to the public.

L. Each party has the right to written findings of fact and a written decision within forty-five (45) days after the Office of Administrative Hearings receives the initial request for the hearing. The Office of Administrative Hearings shall ensure that the written findings and decision are mailed to each party within the forty-five (45) day limit.

M. A decision made in a hearing is final unless the parent or education agency appeals the decision.

N. The parents have the right, within thirty (30) days after receiving the written decision to appeal the decision of the hearing officer to the Superintendent of Public Schools of North Carolina, Department of Public Instruction, 301 N. Wilmington Street, Raleigh, North Carolina 27601-2825. The superintendent will appoint an impartial review officer to review the decision or conduct another hearing. The review officer is required to give his/her decision within thirty (30) days of the date the superintendent received the request for the appeal.

O. The parents have the right to appeal a decision from the review officer into court.

P. Hearings and reviews must be scheduled at a time and place which is convenient to the parents and child involved.

Q. Extensions of time beyond the forty-five (45) days for the hearing and thirty (30) days for appeals may be granted by the hearing or review officer at the request of the parent or education agency.

R. Parents may be reimbursed for reasonable attorney's fees and other costs, as awarded and determined by a court, should they be the prevailing party in a due process hearing or court action. Attorneys' fees may be reduced for failure to provide notice in the due process petition of the child's name, address, and school; description of the problem; and proposed resolution.

S. Attorneys' fees may not be awarded for participation in IEP team meetings, unless the meeting has been ordered by a judge.

T. Until a hearing, review, or court action is settled, the child must remain in his/her present educational placement unless the parents and the education agency agree otherwise.

U. When a parent requests a due process hearing to challenge a disciplinary action that has resulted in placement of the child in an interim alternative education setting for up to forty-five (45) days, the child shall remain in the interim alternative setting for that period or until the action is settled, which ever comes first, unless the parent and education agency agree otherwise. If the parent disagrees with a proposed change in placement following the expiration of the interim educational placement, the child must be returned to his/her prior placement, i.e., the placement that preceded the interim alternative educational placement until the action is settled. In the case of a child whose behavior poses a danger to himself/herself or to others, the educational agency may request an expedited hearing to return the child to an interim alternative educational placement until the parent's due process proceedings are concluded.

V. If a complaint concerns initial admission to public school, with the parents' consent the child must be placed in the public school program until all complaint proceedings are completed.

IN OTHER WORDS.....

The hearing process allows you, as a parent of a child with a disability, to disagree with the school system about the identification, evaluation, and placement of your child and the services which are being provided for your child by the school system. You have sixty (60) days after you disagree with the action of the school concerning one of the above to ask the Office of Administrative Hearings to hold a hearing so both you and the school system can explain each side of the story. You can have an attorney or an advocate with you in the hearing. The hearing will be conducted like a case in a court room. If either you or the school system disagrees with the hearing officer's decision, you can ask the Department of Public Instruction to provide another person who is not associated with the school system or the Department of Public Instruction to review the decision. If the review officer's decision is not satisfactory to you or the school system, either of you can go to court.

The Rights of Surrogate Parents

Under federal and state laws, the education agency has the responsibility to appoint a surrogate parent for a child with special needs for the following reasons:

A. when no parent can be identified;
B. when the education agency, after making reasonable efforts, cannot find or locate the parents; or
C. when the child with a disability is a ward of the state.

IN OTHER WORDS.....

A surrogate parent represents the interests of the child with a disability in all matters relating to his/her identification, evaluation, educational placement, and the provision of a free appropriate public education. Surrogate parents have the same rights of parents as described in this Handbook on Parents' Rights.

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